

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WELVIE JOHNSON,

Plaintiff,

No. CIV S-98-1721 GEB PAN P

vs.

SUZAN HUBBARD, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On December 29, 2005, plaintiff filed a document styled "Motion to Obtain Documents." By this motion, plaintiff seeks a copy of the incident report regarding the assault at issue in this action "or the assailant's prison file." (Plaintiff's Motion, filed December 29, 2005, at 2.) By order filed March 24, 2006, defendants were directed to respond to the motion within fifteen days. Defendants have now filed an opposition to plaintiff's motion. Defendants oppose the motion on the grounds, inter alia, that it was filed well after the deadline set for completion of discovery in this action and that plaintiff has failed to specify which, if any, previously served discovery requests are at issue in the motion.

On November 29, 1999, a scheduling order was issued in this action setting, inter alia, a deadline of March 10, 2000 for completion of discovery in this action. Although other

1 dates set in that scheduling order were subsequently vacated and reset, the discovery deadline
2 was never revised. Moreover, the record reflects that in 1999, plaintiff served defendant
3 Hubbard with a first request for production documents by which plaintiff in requests 1 and 2
4 thereof sought the incident report at issue in this motion. On September 30, 1999, defendant
5 Hubbard served on plaintiff responses to that request in which she objected to the first and
6 second requests on the ground, inter alia, that the requests sought confidential and privileged
7 information. (See Exhibit A to Defendants' Opposition to Plaintiff's Motion to Obtain
8 Documents, at 4.)

9 On November 22, 1999, plaintiff filed a motion to compel discovery responses.
10 That motion was denied by order filed January 26, 2000, as "vague and conclusory and . . .
11 unsupported by any evidence that defendants have failed to provide adequate responses to
12 properly served discovery." (Order filed January 26, 2000.) Plaintiff did not file any other
13 motion to compel further discovery responses.

14 In view of the foregoing, this court finds that plaintiff's motion to obtain
15 documents, filed over six years after service of responses to any discovery request that arguably
16 included the document plaintiff now seeks, is untimely. For that reason, the motion will be
17 denied.

18 On April 10, 2006, defendants filed timely objections to the court's March 24,
19 2006 pretrial order. In light of the request in their pretrial statement to bifurcate the issue of
20 punitive damages, defendants object to that part of the pretrial order finding inapplicable a
21 separate trial of issues. Good cause appearing, defendants' request for bifurcation of the issue of
22 punitive damages will be reserved for consideration by the district court at the trial confirmation
23 hearing set for April 13, 2007.

24 In accordance with the above, IT IS HEREBY ORDERED that:

25 1. Plaintiff's December 29, 2005 motion to obtain documents is denied; and

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John F. Winkler
UNITED STATES MAGISTRATE JUDGE

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